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C O N F I D E N T I A L SECTION 01 OF 02 BOGOTA 008241

SIPDIS

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SUBJECT: OBSERVATIONS ON UPCOMING COURT DECISION ON
REELECTION

Classified By: Ambassador William B. Wood

Reasons: 1.4 (b,d)

1. (SBU) Summary: Commentators continue to differ in their predictions about the Colombian Constitutional Court's decision on President Uribe's reelection. A leading newspaper recently published an extensive article predicting a 6-3 vote in favor of Uribe's reelection, while others suggest different outcomes, none of which would permit Uribe to run for a consecutive second term. We understand that the Court could rule in late October. End Summary.

Four Scenarios

2. (U) Post's contacts agree on the four possible directions the Constitutional Court decision could take, but disagree on which is the more likely outcome. The four scenarios are:

--Allow reelection;
--Allow non-consecutive reelection (as was the case prior to the 1991 Constitution);
--Allow reelection, but only beginning with future Presidents; or
--No reelection.

Leading Weekly Predicts 6-3 Vote

3. (U) On August 21, prominent weekly newspaper El Espectador published an extensive article stating that, if the vote were held now, the Court would rule 6-3 in favor of President Uribe's reelection. The article claimed to be based on knowledge of the legal opinion drafts of eight of the nine Constitutional Court magistrates. (Note: the article caused the magistrates to issue a rare press release criticizing the newspaper for purportedly politicizing the Court's consideration of the reelection matter. End Note.)

Inspector General Says Law Unconstitutional

4. (U) The article reached the opposite conclusion to that of Inspector General (Procurador) Eduardo Maya, who wrote in July that the reelection law was "null" because of procedural irregularities associated with its passage in Congress. Maya is regarded as a legal heavyweight whose opinion could be persuasive for some magistrates. We understand that the Court has sided with the IG's recommendation in roughly 90 percent of the cases it has heard since its inception in 1991.

Hybrid Scenarios

5. (C) In addition to potential up/down rulings, two additional scenarios are possible. First, that the Court might rule in favor of reelection, but not consecutive, as was the case in Colombia from the late 1800s until the 1991 Constitution. Second, Bogota Law Association President Alfonso Clavijo has told us that the Court is considering striking a clause (the "transition paragraph") that states that the current President or any former President may be elected to an additional term. The clause in question was added in the sixth round of voting (Senate plenary). Colombian law states that any significant modifications of legislation by either plenary must first be re-reviewed and re-voted by the relative committee. In this case, re-review did not occur. According to Clavijo, were the clause to be annulled, the law would enter into force only with future Presidents and Uribe could not benefit from it.

Factors That Could Influence Magistrates

6. (C) The Court could be influenced by Uribe's high approval ratings. Uribe continues to maintain 70 percent approval, and a recent poll showed roughly 65 percent favoring his reelection. The majority of our political contacts argue reelection will stand and Uribe will be able

to run in 2006. The argument they use is along the lines of "no magistrate wants to be on the wrong side of public opinion." Pro-Uribe actors are arguing that Congressional debate was lengthy and detailed by any standard.

17. (C) Uribe's early August appointment of former President Andres Pastrana -- a declared opponent of reelection -- as Ambassador to the U.S. might carry weight with some magistrates. Senior Conservative Party members, including Senators Luis Humberto Gomez Gallo, Carlos Holguin, and Jesus Carrizosa, have told us that two Court magistrates are Pastrana loyalists. While these contacts have not indicated first hand knowledge of a quid pro quo on supporting reelection, they are confident that Uribe asked Pastrana to lobby the Court in favor of reelection.

18. (C) On the other hand, we estimate that few if any of the magistrates (who serve staggered eight year terms) have high-level political ambitions. As such, they are not necessarily concerned with a negative public reaction to a potential ruling against reelection. Colombia's high courts (Constitutional, Supreme, and Council of State) are perceived to be biased towards the Officialist Liberal Party, an organization that strongly resists reelection (for obvious political reasons, including the prospect of facing Uribe in 2006). In particular, Liberal Party head and former President Cesar Gaviria -- a leading opponent of reelection -- appears to have several loyalists on the Court, including Court President Manuel Jose Cepeda. The intent of the framers of the 1991 Constitution was strongly anti-reelection, and many members of the legal community continue to argue in favor of the spirit of the 1991 Constituent Assembly.

Late October Ruling Possible

19. (C) President Cepeda told us recently that the Court would try to issue its ruling prior to its mid-November deadline because magistrates understood the importance of the matter for Colombia. Cepeda's explanation of the procedural requirements and deadlines that must be met prior to issuing an opinion suggest that the Court could rule in late October.
WOOD